No. 14816

IN THE

# United States Court of Appeals

FOR THE NINTH CIRCUIT

---

WILLIAM LEVECKE and REED LEVECKE, doing business as THE LEVECKE COMPANY,

*Appellants,*

*vs.*

GRIESEDIECK WESTERN BREWERY CO., a corporation, and CARLING BREWING CO., a corporation,

*Appellees.*

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## APPELLANTS' OPENING BRIEF.

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### Statement of the Pleadings and Facts.

On February 24, 1955, appellants filed an action against the appellees in the Superior Court of the State of California, in and for the County of Los Angeles, for damages for breach of contract and fraud [Tr. pp. 11 *et seq.*]. An order was entered in said court for service of Summons and Complaint in said action upon the defendant, Griesedieck Western Brewery Co., by serving the Secretary of State of California [Tr. pp. 22-23].

Service of the said summons and complaint in said action was duly made upon said appellee Griesedieck Western Brewery Co. by serving the said Secretary of State of California [Tr. pp. 47-48], and was made upon

the other appellee, Carling Brewing Co., by serving its agent in California [Tr. pp. 49-50].

About March 29, 1955, each appellee filed a petition for removal of said action from the Superior Court of the State of California, Los Angeles County, to the United States District Court, Southern District of California, Central Division. At the same time they filed their undertakings on removal of said cause [Tr. pp. 3 *et seq.*].

Thereafter, on or about April 10, 1955, said appellees filed a notice of motion, and motion, to set aside, vacate and quash the service of summons and complaint; also a notice of motion, and motion, to dismiss [Tr. pp. 23-25 and 49-51]. Said motions duly came on to be heard. Thereafter, the Court made its order, granting the motion to quash service of summons and complaint on each of said appellees and denying their motion to dismiss [Tr. pp. 147-150]. The order granting said motion was docketed and entered on May 13, 1955 [Tr. p. 150].

On May 19, 1955, appellants filed their Notice of Appeal from said Order granting the motion to quash service of summons and complaint on the appellees [Tr. p. 151].

## Facts.

In California, the appellee Griesedieck Western Brewery Co. (sometimes herein referred to merely as "Griesedieck") is a foreign corporation, being incorporated and existing under and by virtue of the laws of Illinois [Tr. p. 26]. Appellee Carling Brewing Co. likewise, is a foreign corporation, being incorporated and existing under the laws of Virginia [Tr. p. 51]. Appellants have alleged in their complaint that said appellees, and each of

them, breached its contract with appellants, and as a result thereof and in violation of said contract, the appellants were deprived of their rights to make sales of certain beer products manufactured by appellees. It is further alleged that as a result of said breaches of contract, appellants have suffered substantial damages [Tr. pp. 11-21].

### Appellee, Griesedieck Western Brewery Co.

The appellee Griesedieck Western Brewery Co. with plants at Belleville, Illinois, and St. Louis, Missouri, was doing business in the State of California from 1950 to 1954. During said period of time the officers of said appellee made frequent visits to California, to supervise the heavy sales in said state of said appellee's beer products [Tr. p. 63]. Appellants were openly, freely and frequently acknowledged as the agents and distributors in California for Griesedieck and for promoting and selling appellee's said beer products during the period of years mentioned [Tr. pp. 75-96]. Likewise, during said years, said appellee's president made trips to California. He visited many of the supermarkets in that state, for the purpose of increasing the sales of appellee's beer products. He called on the various wholesale grocer organizations, and many retail stores in California [Tr. pp. 75-92]. In his visits to these stores, appellee's president thanked the various stores for the business they had given to his company [Tr. pp. 79, 81-85] and told them he was interested in increasing the sales of said appellee's beer products. He also told executives of these various stores that they were assured of continued sales of his company's beer because Griesedieck was on the Pacific Coast to stay; they intended to continue business in this area

[Tr. pp. 85-88]. During these sales promotion trips to California, one of the appellants usually accompanied appellee's president when he went on side trips within the state, to stimulate sales. In order to assure the purchasers of said appellee's beer products that the said appellee company was on the Pacific Coast to stay, the president gave to the various stores and prospective purchasers copies of the said appellee's financial statement, to show that said appellee was able to meet its obligations and could carry out all of its sales agreements and responsibilities [Tr. p. 87]. The said executive thanked the various stores for the business given Griesedieck [Tr. p. 84] and assured them that the appellee was personally making sales of its products in California and would be personally responsible to the stores in said state [Tr. pp. 87 and 143].

Further Griesedieck's president, on behalf of said appellee, donated prizes for contests by the various California stores involving the sale of appellee's beer products [Tr. p. 69]. He also talked to the employees of the various stores and expressed appreciation to them for their support in the sales of appellee's products. He attended a party given by the employees of one of the large chain stores and told the employees that he would attend their party every year [Tr. p. 69].

As part of the supervision and sales effort in California on the part of appellee Griesedieck, the said company inspected the merchandise program and plan of appellants, for the sale of appellee's beer products. Appellee sent out advertising matter to appellants, directed appellants on how to carry out their sales programs to increase the sale of appellee's products [Tr. pp. 70, 89 and 97] and appellee

advertised its products throughout the State of California [Tr. p. 70].

Said appellee Griesedieck delivered to appellants its particular form of sales delivery books and it required appellants to make delivery of appellee's beer products on said delivery slips. Griesedieck also delivered to appellants, its particular forms of "order confirmation." This form, which was approved by said appellee, was signed by appellants, *as agents and employees of said appellee* [Tr. p. 73].

Letterheads and envelopes of said appellee Griesedieck with said company's name and principal office address thereon, were sent to appellants in California for appellants' use *as agents of said appellee* [Tr. p. 74]. The appellants used said stationery, signing the same as agents and employees of said appellee and held themselves out to the various purchasers of beer products in the State of California *as agents and employees of said appellee* [Tr. p. 74]. Business cards of said appellee Griesedieck, likewise were sent to appellants for their use in California. Said cards showed the name of appellants *as agents of said appellee company* [Tr. p. 74]. Appellee, Griesedieck Western Brewery Co., was listed in the Central section of the telephone directories and the classified directories, issued by the Pacific Telephone Company in the County of Los Angeles, California [Tr. p. 74]. The said appellee paid appellant a commission on certain of its sales of appellee's beer products in California, and on other sales of its products, acknowledged the appellants as distributors [Tr. pp. 74 and 75].

Appellee Griesedieck kept a steady flow of its beer products coming into the State of California, between

1950 and November 30, 1954. The business of said appellee increased every year in the State of California, and in the year 1954, it became fifth in size of business done in the State of California among all breweries which imported beer into this state [Tr. p. 69]. The large volume of business of said appellee in California was due, in generous measure, to its direct and constant solicitation of business both through its officers, and through these appellants, as appellee's agents and representatives [Tr. p. 70].

The Drexel Distributing Company was one of the distributors of appellee Griesedieck's products in California [Tr. pp. 32-33].

The business done by said appellee in the State of California was a substantial part of its business, and because of the business done in California by said appellee, it regarded California as one of its chief markets [Tr. pp. 70 and 88].

Appellee Griesedieck acknowledged that it was doing business in California and that appellants were acting as its agents, as shown by excerpts from a few of its many letters. Typical of this said self-recognition are the following statements of Edward D. Jones, Griesedieck's president, contained in his letters to the corporation's own stockholders, also to the appellants, its agents and to various retail stores which were solicited for business directly by Griesedieck through its president.

Examples:

1. "I had planned to bring Sewing with me to California but I believe I would like to defer his coming along at this time because of some other ac-

tivities that we want him to take care of." [Tr. p. 76—letter to appellant, William R. LeVecke.]

2. "Do not arrange anything for me to do at night because either you or I will be very tired calling on supermarkets during the day." [Tr. pp. 76-77—letter to appellant, William D. LeVecke.]

3. "While there I called on about thirty supermarkets with our distributor, Mr. William LeVecke, LeVecke Distributing Company, 1807 East Olympic Boulevard, Los Angeles, California, Tel. Van Dyke 7944." [Tr. p 7—letter to California stockholders of Griesedieck.]

4. "I again want to thank you and your organization for the fine business you have been entrusting to us and you may be sure we appreciate this confidence." [Tr. p. 79—letter to Shopping Bag Stores.]

5. "Our representative, Mr. William LeVecke, reports getting our beers established in your good firm. We are most appreciative of this and you may be sure that we in the brewery will follow this account and do everything we can at this end to give you good service and satisfaction." [Tr. p. 81—letter to Pacific Merchantile Co.]

6. "I again want to thank you and your organization for the fine business you have been entrusting to us and you may be sure we appreciate this confidence." [Tr. p. 83—letter to United Grocers.]

7. "Mr. LeVecke and I called on 68 Safeway Stores and made a survey that was most comprehensive, starting in Tucson and ending in San Francisco. I am sure Mr. LeVecke would be happy to give you excerpts of this survey at any time you would like to know about it." [Tr. p. 84—letter to Safeway Stores.]

8. "I should like to emphasize that *we are on the Pacific Coast to stay,* as revealed in our financial statement that I gave to your Mr. Sorenson. You will believe me when I say that *we are financially responsible to carry out our obligations to you and* your dealers." (Emphasis ours.) [Tr. p. 84—letter to United Grocers.]

9. "I would like to reiterate that we are on the Pacific Coast to stay and if you will inspect our financial statement you will find that we are financially responsible and that we can carry out our responsibility to your good organization." [Tr. p. 86—letter to Certified Grocers.]

10. *"We are on the West Coast to stay. We are adding to our organization in the California area* and I am sending you one of our financial statements which will prove to you that we are financially responsible and prepared to carry out programs that we undertake." (Emphasis ours.) [Tr. p. 87—letter to A. D. Murrell—owner of retail stores.]

11. *"We have been on the Pacific Coast with our products Stagg and Hyde Park '75' for over a year.* Our business is increasing every day. It might interest you to know that *we ship a carload a day into the California area* and I would also like to emphasize that Stagg and Hyde Park '75' are premium products.

"I am sending you one of our financial statements so you will know our financial integrity and our ability to carry out and support our Mr. LeVecke's merchandising program." (Emphasis ours.) [Tr. p. 88—Vons Supermarkets.]

12. "Our representative, Mr. William LeVecke, 1807 East Olympic Boulevard, Los Angeles, California, will be happy to handle any special inquiry

that you may have regarding our company or products." [Tr. p. 89—letter to Duca and Hanley Supermarket.]

13. "I again want to thank you and your organization for the fine business you have been entrusting to us and you may be sure we appreciate this confidence." [Tr. p. 90—letter to Certified Grocers.]

14. "During the month of March the following persons purchased Griesedieck Western Brewery Company's stock: . . .

"A letter of welcome into the family of stockholders was written these people telling them you are our representative and that you sell Safeway Stores and to contact you for any further information." [Tr. p. 93—letter to appellant, William R. LeVecke.]

15. "I again want to thank you and your organization for the fine business you have been entrusting to us and you may be sure we appreciate this confidence." [Tr. pp. 96-97—letter to United Grocers.]

16. Also to the same effect is a letter from another executive of said appellee company:

"As usual, Mr. Jones returned from his trip to the West very much enthused about your operation and, as he put it, 'We have only scratched the surface.' One of these days I hope to have the opportunity of coming out and seeing your operation first hand . . ." [Tr. pp. 97-98—letter to appellant, William R. LeVecke from Hans Saemann—Asst. Advertising Manager.]

## Appellee, Carling Brewing Company.

The appellee, Carling Brewing Company (sometimes herein referred to merely as "Carling"), at all times mentioned in the complaint in this action, was selling its beer products in the State of California.

The president of said corporation, Ian R. Dowie, in his affidavit filed in this action [Tr. pp. 51-58] admits that during the period in question:

1. That its products were distributed in California [Tr. p. 53].

2. That K. W. Burrie was its representative in California (evidently its manager) and that there were six other employees of the company, working under the direction of Mr. Burrie, in California [Tr. p. 54].

3. That the corporation had an office at 6399 Wilshire Boulevard, Suite 405-406, Los Angeles, California, and that said company is listed in the telephone directory as located at said address [Tr. p. 54].

4. That said employees performed the following services in California for their employer, Carling:

(a) They called upon wholesale distributors of beer and ale for the company [Tr. p. 54].

(b) They inspected the records of said distributors in order to report the volume of sales to the head office of the company and in order to direct said distributors to keep their records in a pattern recommended by Carling [Tr. p. 54].

(c) They encouraged and directed the distributors in their sales efforts of said Carling products and recommended the use of various sales materials for the said corporation's products [Tr. p. 55].

(d) They kept in constant contact with the distributors and retail customers and assisted them in popularizing the corporation's products [Tr. p. 55].

(e) They assisted the distributors to make sales of the corporation's products [Tr. p. 55].

**Jurisdiction of United States District Court and United States Court of Appeals for the Ninth Circuit.**

The statutory provisions sustaining such jurisdiction are:

(a) The United States District Court had jurisdiction by reason of Removal of the Action from the Superior Court of the State of California, County of Los Angeles, pursuant to Title 28, United States Code, Sections 1441, 1446 and 1447.

(b) The Order of the United States District Court granting the motion of the defendants to Set Aside, Vacate and Quash Service of Summons and Complaint is a final decision determining the rights of the parties involved therein, from which an appeal may be taken under Title 28, United States Code, Section 1291.

The pleadings showing the existence of jurisdictions, are:

(a) Complaint filed in the Superior Court of the State of California, in and for the County of Los Angeles [Tr. pp. 11-21, incl.].

(b) Petition for Removal to the United States District Court, Southern District of California, Central Division [Tr. pp. 3-7, incl.].

(c) Notice of Motion, and Motion to Set Aside, Vacate and Quash Service of Summons and Complaint on Griesedieck and Motion to Dismiss, and affidavits [Tr. pp. 23-48, incl.; 120-135, incl.].

(d) Notice of Motion, and Motion to Set Aside, Vacate and Quash Service of Summons and Complaint on Carling and Motion to Dismiss, and affidavits [Tr. pp. 49-62, incl.; 114-119, incl.].

(e) Affidavits in Opposition to defendants' (appellees') Motions [Tr. pp. 63-113, incl.; 136-143, incl.].

(f) Minutes of the United States District Court's order granting motion of each defendant to quash service of summons and complaint and denying motion to dismiss [Tr. p. 144].

(g) Order of the Court granting the Motions of the defendants Griesedieck and Carling to Set Aside, Vacate and Quash Service of Summons and Complaint [Tr. pp. 147-150, incl.].

(h) Petition for Rehearing [Tr. pp. 145-146].

(i) Minutes of the Court denying Rehearing [Tr. pp. 144-145].

(j) Notice of Appeal from the Order Granting Motions to Quash [Tr. p. 151].

## Specification of Errors.

The specification of errors relied upon in this appeal by appellants are as follows:

1. The District Court erred in granting the Motion of appellee Griesedieck to Set Aside, Vacate and Quash Service of Summons and Complaint in this action and in making and entering its Order granting said Motion.

2. The District Court erred in granting the Motion of appellee Carling to Set Aside, Vacate and Quash Service of Summons and Complaint in this action and in making and entering its Order granting said Motion.

3. The business activities, including the solicitation of business, in the State of California, by appellees Griesedieck and Carling constituted "doing business" under the laws of the State of California, and made said appellees, and each of them, amenable to process in an action commenced in a court of the State of California and subsequently transferred to the United States District Court.

4. The District Court erred in quashing the service of Summons and Complaint on the appellees, and each of them, for the further reason that each of the appellees had appeared in said action by reason of the filing of their petitions for removal of the action from the Superior Court of the State of California, In and for the County of Los Angeles, to the United States District Court, for the Southern District of California, Central Division, and by reason of said appearances in said action, the said District Court had lost jurisdiction to quash service of said summons and complaint, as to each said appellee.

## APPELLANTS' ARGUMENT.

### A Foreign Corporation Which Enters the State of California for the Purpose of Carrying on There a Substantial Part of Its Ordinary Business, Is "Doing Business" in Said State When It Maintains a Continuing Business Activity Therein.

It is a well established rule of law in California that a foreign corporation which enters said state for the express purpose of doing a substantial part of its ordinary business therein, and thereafter maintains and carries on continuing business activities in said state, is "doing business" therein, so as to make it amenable to process issued out of the California courts.

The present action was instituted against the appellees in the Superior Court of the State of California in and for the County of Los Angeles, and thereafter the appellees filed their petitions for removal of the action to the United States District Court, Southern District of California, Southern Division. Thereafter pursuant to motions of appellees the said District Court made its Order Quashing Service of Summons and Complaint in said action on appellees, the Court stating in its Order that appellees were not doing business in the State of California.

In all of the affidavits filed, both in opposition to, and in support of, said motions, the evidence therein contained clearly shows that the appellees, and each of them, were doing business in California. The references to the facts hereinafter recited are contained in the foregoing "Statement of the Case" and need not be restated.

The appellee Carling had a business office located in the City of Los Angeles, and seven regular employees of

the company, including a manager. It was the duty of these employees to solicit business for the appellee Carling, throughout the States of California, Oregon and Washington. Their method of solicitation of business for said appellee was to set up distributors for their employer's beer products. After setting up said distributors, the said employees would keep in constant touch with them and would assist said distributors to make sales, to maintain a high level of sales, to keep records in the manner approved by the said appellee, and would furnish the said distributors with sales materials and direct them on how to use said materials most effectively. The said offices from which said employees worked were under the name of appellee, Carling Brewing Co., and the telephone number was listed under said appellee's name. The evidence clearly discloses that the company's sales efforts could have been no greater even though its main office had been located in California.

The evidence contained in said affidavits shows that the appellee Griesedieck did business by setting up a distributor's agency in the State of California which would take care of sales of its beer products in California and Arizona. The appellants acted as one of said distributors for Griesedieck and Drexel Distributing Company acted as the other distributor. In addition to setting up these distributors, as aforesaid, the said appellee took an active part in doing everything possible to maintain, and increase, the high level of sales of its beer products in California. It sent its president to California, on numerous occasions, to conduct sales tours through the state. Its president, in company with one of its distributors, one of the appellants herein, personally solicited business for said appellee company from all of the large grocery

stores and wholesale grocers in California. Said corporation president urged these stores and grocers to purchase its beer products and to help in increasing sales of appellee's beer products. In order that its beer products would be properly received in California, Griesedieck's president assured all these grocers that said corporation intended to remain in business in California and that its operations were not to be of short duration, but that it was permanently in business in the State of California and on the Pacific Coast.

As further assurance of said appellee's ability to remain in business in California, the said appellee sent a copy of its financial statement to each of said grocers and stores for the purpose, as stated by its president, of establishing that "we are financially responsible to carry out our obligations to you."

Thereafter, said appellee Griesedieck did a large volume of business in the State of California. In fact, its sales of its beer products in said state became so large that in the year 1954, it stood fifth in size among all brewery companies importing beer into California.

Some of the early cases on "doing business" leaned toward the principle, that mere solicitations by a foreign corporation for business in a state other than its origin, did not constitute "doing business" in said state. However, in recent years this rule, in the decisions of the Federal courts, the California courts and generally, has been "laid to rest" (as stated in the *Jeter v. Austin Trailer* case, *infra*), so that it is now well established that solicitation of business does constitute "doing business" in the state where the solicitations are made.

In *Koninklyke etc. v. Superior Court* (1951), 107 Cal. App. 2d 495, 237 P. 2d 297, the court (at p. 500, in 107 Cal. App. 2d) said of foreign corporations doing business in California:

> ". . . whether its business is interstate or local, it is within the jurisdiction of our courts . . . In the more recent decisions, solicitation, *without more,* constitutes "doing business" within a state when the solicitation is a regular, continuous and substantial course of business." (Emphasis ours.)

In *Jeter v. Austin Trailer Equipment Co.* (Dec., 1953), 122 Cal. App. 2d 376, 265 P. 2d 130, the court declared that the venerable rule that mere solicitation is not "doing business" had been laid to rest and the rule in California now is that solicitation of business is sufficient to constitute "doing business" in the State of California.

The court in the *Jeter v. Austin Trailer* case, at page 386 cites *Nippert v. City of Richmond* (1946), 327 U. S. 416, 66 S. Ct. 586, 90 L. Ed. 760, as follows:

> ". . . that mere solicitation, when it is regular, continuous and persistent, rather than merely casual, constitutes 'doing business,' contrary to formerly prevailing notions."

In the case of *Woodworkers Tool Works v. Byrne* (1951), 191 F. 2d 667 and 202 F. 2d 530, it was held that business activity maintained in a state by a foreign corporation constitutes "doing business."

In California it is established law that if the representation which a foreign corporation maintains in this state gives it substantially the same benefits it would enjoy by operating through its own office or paid sales

force, it is "doing business" in this state, even though said business is done through agencies.

*Sales Affiliates v. Superior Court* (1950), 96 Cal. App. 2d 134, 214 P. 2d 541;

*Fielding v. Superior Court* (1952), 111 Cal. App. 2d 490, 244 P. 2d 968;

*Iowa Mfg. Co. v. Superior Court* (1952), 112 Cal. App. 2d 503, 246 P. 2d 681;

*Jeter v. Austin Trailer Equipment Co.* (1953), 122 Cal. App. 2d 376, 265 P. 2d 130.

The courts of California have further declared that the particular method of operation by a foreign corporation in this state is immaterial and that the essential thing is whether or not it is actually "doing business," without regard to whether it is "doing business" through independent contractors, agents, employees, or in any other manner.

*Fielding v. Superior Court (supra);*

*Iowa Mfg. Co. v. Superior Court (supra);*

*Thew Shovel Co. v. Superior Court* (1939), 35 Cal. App. 2d 183, 95 P. 2d 149.

In *Frene v. Louisville Cement Co.* (1943), 134 F. 2d 511, 146 A. L. R. 926, the United States Court of Appeals for the District of Columbia held that regular solicitation by a Kentucky corporation of business, which was continuous, and constituted a substantial part of the business of the foreign corporation, constituted "doing business" in the District of Columbia.

A case similar to the one here on appeal was presented in the case of *Perkins v. Louisville & N. R. Co.* (1951), 94 Fed. Supp. 946. This case arose in the United States

District Court, Southern District of California, Central Division, the Honorable James N. Carter, District Judge, presiding. In the Perkin's case the question was whether or not the solicitation of business within the State of California by a foreign corporation maintaining an office in the City of San Francisco, California, constituted doing business so as to render the corporation subject to the jurisdiction and process of the state courts. The action was brought by a California resident against a railroad corporation, incorporated in the State of Kentucky, for personal injuries incurred while alighting from the defendant's train in Tennessee. The action was initially filed in the Superior Court of California.

The court in said case stated (at p. 948) that

> "whether the corporation was present or doing business within the state so as to make it amenable to the state's process, is undoubtedly a question of substantive law and is to be decided primarily by the decisions and statutes of the State of California. (*Erie R. Co. v. Tompkins* (1938), 304 U. S. 64, 58 S. Ct. 817, 82 L. Ed. 1188.)"

In his decision Judge Carter (at p. 950) also quoted from the opinion of Justice Rutledge in the case of *Frene v. Louisville Cement Co.* (*supra*), in which the Justice said

> "In general, the trend has been toward a wider assertion of power over non-residents and foreign corporations than was considered permissible when the tradition about 'mere solicitation' grew up."

In the *Perkins case, supra,* Judge Carter stated *that solicitation was a necessary step in the operation of a business,* and that when this solicitation took place within

a state, it constituted the operation of a business in the state.

He stated further, that the California courts had recently passed on the question of solicitation constituting the doing of business, on numerous occasions, and that it was apparent that in California the courts had taken a broad view of the concept of doing business by a foreign corporation. He said (at p. 948):

> "The California courts have had numerous occasions to pass upon the question now before us. It has been said that to be doing business in California in a jurisdictional sense, a foreign corporation must transact in this state some substantial part of its ordinary business through its agents or officers selected for that purpose. (*Jameson v. Simonds Saw Co.* (1906), 2 Cal. App. 582, 84 Pac. 289; *Milbank v. Standard Motor Const. Co.* (1933), 132 Cal. App. 67, 22 P. 2d 271; *Charles Ehrlich & Co. v. J. Ellis Slater Co.* (1920), 183 Cal. 709, 192 Pac. 526; *Davenport v. Superior Court* (1920), 183 Cal. 506, 191 Pac. 911. A California Court has recently held that a foreign manufacturing corporation was present within the state through the activities of its distributors who acted as agents although not intended to be such. (*Thew Shovel Co. v. Superior Court* (1939), *(supra)*. See also *West Pub. Co. v. Superior Court* (1942), 20 Cal. 2d 720, 128 P. 2d 777.)"

In said *Perkins* case *(supra)*, the court pointed out (in the above quoted excerpt) that a foreign corporation was present in California through the activities of its distributors although it did not intend to be present in said state. This is the identical situation in this action now on appeal to this Court, that is, both Griesedieck and Carling were doing business in California because of the

activities of their distributors, even though said appellees may not have intended to be.

After this decision in the *Perkins* case, the California courts have rendered decisions in the cases of *Iowa Mfg. Co. v. Superior Court (supra), Jeter v. Austin Trailer Equipment Co. (supra)* and *Koninklyke, etc. v. Superior Court (supra)*, each of which has passed directly upon issues identical to those involved in this case, and have firmly adopted and reemphasized the rule that mere solicitation does constitute "doing business" in the State of California.

Subsequent to the order made in this case now on appeal, granting the motion to quash service, the case of *Duraladd Products Corporation v. Superior Court* was decided by the District Court of Appeal of the State of California, on June 29, 1955, and is reported in 134 A. C. A. 266, (285 P. 2d 699). The rule in that case relating to a foreign corporation "doing business" in this state, if applied to the facts of this case, would require the court in this case to hold that appellees here are amenable to process issued out of the state courts. In the cited case, the Duraladd Products Corporation, a foreign corporation, was made a defendant in an action for personal injuries resulting to the plaintiff from the collapse of a ladder. The ladder was purchased by a retailer from Larson Ladder Company, a Los Angeles concern, which in turn had purchased the ladder in unassembled form, from the Duraladd Products Corporation. The Duraladd Products Corporation petitioned the California District Court of Appeal for a Writ of Prohibition to enjoin the trial court from proceeding further against said defendant in the action and to vacate an order denying the corpora-

tion's motion to quash substituted service made on it in said action in the state court.

The District Court of Appeal held that the Larson Ladder Company was the representative and distributor of the Duraladd Products Corporation in the State of California and said:

> "In the instant case we have a situation where the Larson Company was not only an exclusive distributor, but, insofar as it assembled parts into a completed whole, it participated in the final stages of manufacture of Duraladd's products. Such products were purchased outright by the California concern and Duraladd had no financial interest whatever in them from the time of shipment. However, it is apparent that Duraladd maintained a continuous course of business with the California company and continued after the original installation of the assembly equipment to maintain an interest in seeing that the assembling was done properly; and, also, Duraladd was obviously interested in maintaining the volume of California sales and to that end furnished advertising material. In the agreement between petitioner and Larson Ladder Company it is provided, among other things, that 'It is the intention of the parties listed in the within agreement that Mr. Dodd of the corporation shall make annual visits to Larson for the purpose of technical consultation.' Duraladd, at least tacitly, held out Larson Ladder Company as its California distributor or representative."

The court further stated that the facts showed that Duraladd did no advertising in California but that the Larson Ladder Company put out a catalog sheet, stating that it was the distributor for Duraladd; that the Duraladd Company furnished the plates for this brochure and

composed the copy. The court said that the application of the rules laid down in the case of *Fielding v. Superior Court (supra), Sales Affiliates v. Superior Court (supra)* and other late California cases, made it clear that the activities of Duraladd in the State of California brought it within the framework of the "doing business" concept for the purpose of the state court acquiring jurisdiction and making the corporation amenable to its process.

The business activities of appellees in the State of California far exceeded the activities of the Duraladd Corporation, in the California case last cited. If the activities of the Duraladd corporation in California constitute "doing business" in said state then by the application of the same principles to the facts in this case, it must necessarily follow that appellees were, and are, fully amenable to the process issued in this action by the Superior Court of California.

## Conclusion.

From the affidavits, and exhibits thereto attached, filed by appellants and appellees in this action, it is clear, that both of the appellees, Griesedieck and Carling, were "doing business" within the State of California under the principles, firmly established by the various federal, California and other state court decisions. The appellees here, by their activities in California have obtained the same full and complete business advantages and privileges that would have accrued to them if their head office had been located here or if they had been incorporated as a California corporation.

Each of the appellees admits that it had agents in California soliciting and acquiring a great deal of business for it. The evidence and facts set forth in the

various affidavits show that each of appellees had offices in this State through which its products were channeled into commerce in California.

This is not a *border-line* case. On the contrary, the business activities, in California, of appellees here were far more extensive than the business activities considered in most, if not all, of the cases cited herein, holding that the foreign corporation involved was doing business within the state, and therefore was amenable to process of the state courts.

By reason of the abundant, uncontradicted and conclusive facts established herein, appellants believe that the District Court's order on the motion quashing service of summons and complaint on the appellees should be reversed and that said appellees should be required to answer said complaint and proceed to trial of the action.

Respectfully submitted,

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